

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JERRY PINNELL, et al.,

Plaintiffs,

v.

**TEVA PHARMACEUTICALS USA,
INC., et al.,**

Defendants.

Civil Action No. 2:19-cv-05738-MAK

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs, Jerry Pinnell, Jeremy Fernandez, and Shane Perrilloux ("Plaintiffs," "Named Plaintiffs," or "Class Representatives"), hereby submit this Supplemental Memorandum In Support of Plaintiffs' Motion for Final Approval of Class Action Settlement to address the questions of the Court as set forth in the April 28, 2021 Order (ECF No. 81).

A. The Grounds for An Award of \$15,000 to Each of the Named Plaintiffs

As set forth in Plaintiffs' Memorandum of Law in Support of Motion for An Award of Attorneys' Fees and Reimbursement of Expenses and Case Contribution Awards to the Named Plaintiffs, *see* ECF No. 76-1 at 15-16, Plaintiffs request Class Representatives Pinnell, Fernandez, and Perrilloux be granted, at the Court's discretion, a Case Contribution Award in the amount of \$15,000.00 as compensation for the time and effort they expended in successfully prosecuting this case to a successful resolution. Plaintiffs expended significant time and effort to advance this case to arrive at this favorable settlement for the class. They provided documents, reviewed the Complaint and Amended Complaint, and monitored Class Counsel and the progress of the litigation, including discussions about the terms of the Settlement. Additionally, each of the

Named Plaintiffs presented for a deposition, which involved a substantial time commitment, including the time needed to prepare for the depositions with counsel. Most importantly, by volunteering to represent the Class, Plaintiffs agreed to attach their names to this lawsuit against their former employer. As such, Plaintiffs' Names and their involvement in this case is permanently public record. In granting a request for \$15,000 each for three plaintiffs in an analogous ERISA breach of fiduciary action, a court had this to say:

Named Plaintiffs Mr. Hundley, Mr. Simon and Ms. Hernandez have been active, hands-on participants in this litigation, expending significant amounts of their own time to benefit the Class. They came forward to initiate this action, and thereafter remained in frequent contact with Plaintiffs' Counsel. (Fees Mem. at 21.) They responded to document requests and interrogatories; reviewed and approved pleadings; assisted with discovery; and were involved in settlement discussions. (*Id.*) They prepared for, traveled to and sat for full-day depositions. (*Id.*) All of this can be unpleasant for people inexperienced in litigation. The Court easily concludes that Mr. Hundley, Mr. Simon and Ms. Hernandez should be compensated for their efforts on behalf of the Class, which has benefited greatly from their representation. Accordingly, the Court grants case contribution awards in the amount of \$15,000 to each of the three Named Plaintiffs.

In re Marsh ERISA Litig., 265 F.R.D. 128, 151 (S.D.N.Y. 2010). The total award for the three class representatives represents less than two percent of the total Settlement Fund. Substantially larger awards have been approved as well within the ranges typically awarded in comparable cases. *See, e.g., Tussey v. ABB, Inc.*, 2012 WL 1113291, at *21 (W.D. Mo. Nov. 2, 2012) (awarding \$25,000 to each class representative in ERISA 401(k) fee class action); *Mayer v. Driver Solutions, Inc.*, 2012 WL 3578856, at *5 (E.D. Pa. Aug. 17, 2012) (approved \$15,000 award for class representative); *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. 2009) (“[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.”) (quoting *Cullen*, 197 F.R.D.

at 145); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upheld \$25,000 award to class representative); *Beesley v. International Paper*, 2014 WL 375432, at *4 (\$25,000 awarded to each of the three named plaintiffs).

Without the participation and efforts of the Named Plaintiffs, Class Counsel would not have been able to secure this settlement on behalf of the class. As such, the requested Case Contribution awards in the amount of \$15,000.00 are reasonable and commensurate with the Named Plaintiffs' efforts to advance the case.

B. The Specific Amount Paid to JND Legal Administration LLC

JND Legal Administration, LLC is a settlement administration services provider and is serving as the Settlement Administrator in this case. *See* Supplemental Declaration of Jennifer M. Keough Regarding Settlement Administration (dated April 29, 2021) ("JND Decl.") at ¶¶ 1-2. JND Legal Administration, LLC provided a cost estimate of \$42,391.00 to complete administration of the Settlement. As of April 30, 2021, JND Legal Administration has provided an invoice in the amount of \$36,265.53. To date, they have not yet been paid for their services.

C. Class Counsel Contingency Fee Agreement

On April 29, 2021, Plaintiffs filed Plaintiffs' Motion to File Under Seal (ECF No. 83) requesting the Court deem Class Counsel's contingency fee agreement with Plaintiffs a confidential document. Among other things, the agreement contains attorney-client communication and includes the Plaintiffs' names and e-mail addresses, which is precisely the type of private personal information FED. R. CIV. P. 26(c)(1) seeks to protect. Plaintiffs submitted courtesy copies of the contingency fee agreements to the court via e-mail on April 29, 2021.

D. Settlement Notice

On November 16, 2020 and November 17, 2020, Defendants identified 18,611 unique Settlement Class member records. *See* JND Decl. at ¶¶ 4-5 attached hereto as Exhibit A. On January 6, 2021, the Notice was mailed to 18,611 Class Members. *Id.* at ¶ 6. As of April 29, 2021, 33 mailed Notices were returned as undeliverable. *Id.* at ¶ 7. Of the undeliverable Notices, five were re-mailed to updated addresses. *Id.* As of April 29, 2021, 18,583 Class Members were sent a mailed Notice which was not returned as undeliverable (representing 99.85% of Class Members). *Id.* at ¶ 8.

Also, on January 6, 2021, an e-mail Notice was sent to 7,311 Class Members' e-mail addresses (representing 6,078 unique Class Member records). *Id.* at ¶ 9. Class Members with multiple, valid e-mail addresses were sent an e-mail Notice to each e-mail address. *Id.* While 11,954 Class Member e-mail addresses were provided in the original class data, a total of 4,643 e-mail addresses were flagged as invalid and were not attempted in the e-mail campaign. *Id.* at n. 3. Of the Class Member records with e-mail addresses, e-mail Notices to 146 Class Members were undeliverable. *Id.* at ¶ 10. The e-mail Notice was successfully delivered to a total of 5,932 unique Class Member records. *Id.*

Accordingly, of the 18,611 unique Settlement Class member records, a total of 5,922 Class Members were sent both a Mailed Notice which was not returned to JND as undeliverable and an E-mail Notice that was successfully delivered. *Id.* at ¶ 11.

I. CONCLUSION

For the reasons set forth above and in Plaintiffs' Motion for Final Approval of Class Action Settlement, Motion for An Award of Attorneys' Fees and Reimbursement of Expenses and Case Contribution Awards to the Named Plaintiffs, and respective supporting memoranda of law (*see* ECF Nos. 75 to 80-2), the Settlement meets the standard for final approval under Rule 23.

Accordingly, Plaintiffs seek an Order: (1) approving the Class Action Settlement Agreement under FED. R. CIV. P. 23(e); (2) certifying the above-defined Settlement Class; (3) appointing Named Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel under FED. R. CIV. P. 23(g); (4) finding the manner in which the Settlement Class was notified of the Settlement was the best practicable under the circumstances and fair and adequate; and (5) approving the Plan of Allocation. Additionally, Plaintiffs request the Court approve Class Counsel's request for attorneys' fees and expenses, and grant the requests for a case contribution award.

DATED: April 30, 2021

Respectfully submitted,

/s/ Mark K. Gyandoh

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CERTIFICATE OF SERVICE

I certify, on April 30, 2021, I caused the foregoing to be filed with the Clerk of the Court via the CM/ECF system, which will deliver notification of filing to all counsel of record.

/s/ Mark K. Gyandoh